D.B.CIVIL SPECIAL APPEAL (WRIT) NO.307/2006
Guman Dan Rao v. Judge, Labour Court, Jodhpur & ors.

Date of order : 13.09.2006

HON'BLE THE CHIEF JUSTICE SHRI S.N.JHA
HON'BLE SHRI JUSTICE MOHAMMAD RAFIQ

Shri K.S.Yadav for the petitioner

This special appeal is directed against the order of the learned Single Judge dismissing the writ petition of the appellant. The appellant had filed the writ petition challenging the award of the Labour Court holding that the appellant had been removed from service by an order simplicitor which did not warrant any enquiry, and further, that he had not worked for 240 days and therefore he was not entitled to any relief. The learned Single Judge declined to interfere with the award observing that the finding of the Labour Court that the appellant had not completed 240 days is a finding of fact based on appreciation of evidence and that the removal from service was not stigmatic.

Counsel for the appellant referred to the certificate of the Manager (Operations), Jawahar Nagar Depot of the respondent State Road Transport Corporation dated 11.9.1995 and submitted that from the certificate it is evident that the appellant had worked for 271 days. Counsel referred to the definition of “continuous service” in section 25B of the Industrial Disputes Act.

Section 25B so far as relevant for the purpose of this case runs as under :

> "25B.Definition of continuous service.-For the purposes of this Chapter,-
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> (1)a workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorised leave or an accident or a strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman;
>
> (2)where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer-
>
> (a) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than-
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> (i) one hundred and ninety days in the case of a workman employed below ground in a mine; and
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> (ii) two hundred and forty days, in any other case;
>
> (b) ...."

The words of significance in section 25B are "preceding the date with reference to which calculation is to be made." It is not in dispute that the appellant was removed from service by order dated 17.2.1994 and therefore, for the purpose of finding out whether the appellant had worked continuously for one year, the period of twelve calendar months immediately prior to 17.2.1994 has to be taken into

account. The certificate aforesaid refers to the period October, 1992 to July, 1993. Understandably, the certificate does not refer to the subsequent period, for, it is stated that on 9.7.1993 the appellant was relieved for joining the Head Office. There is no material to show whether and for how many days the appellant worked subsequent to 9.7.1993. If we calculate days between February, 1993 and July, 1993, as mentioned in the certificate, the total number of days comes to 151 days. In the absence of any evidence for the subsequent period it is not possible to come to a finding that the appellant had worked for 240 days in twelve calendar months immediately preceding the date of his removal from service. Indeed, it is relevant to mention, the said certificate was not brought on record before the Labour Court. The Labour Court decided the case on the basis of affidavits submitted by the parties and the oral statements in cross-examination of the affidavit witnesses. The finding arrived at by the Labour Court on the basis of evidence before it that the appellant did not work for 240 days is a finding of fact which cannot be set aside in a proceeding under Article 226 of the Constitution of India, and as such the learned Single Judge did not commit any error in dismissing the writ petition.

In the result, the appeal is dismissed.

Mathur/ (MOHAMMAD RAFIQ), J. (S.N.JHA), C.J.